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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,455	02/05/2001	Paul E. Adler	30427	9965

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EXAMINER

MCKANE, ELIZABETH L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/701,455

Applicant(s)

ADLER, PAUL E.

Examiner

Leigh McKane

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 3-10 is/are allowed.
- 6) ☒ Claim(s) 11, 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 12-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites two separate pumps for pumping the slurry. However, only one slurry pump **25** is disclosed. This is confusing, as it is unclear if the two pumps recited are actually the same pump.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Bunin.

Bunin teaches an apparatus for decontaminating slurries, wherein the apparatus includes a pump **14** for pumping the slurry, a sterilizing unit **21** for heating the slurry to a sterilizing temperature, a heat exchanger **19** for transferring heat from the sterilizing slurry to the unsterilized slurry, and a piping circuit **13** connecting the pump to the heat exchanger and the heat exchanger to the sterilizing unit (**29**) and connecting the sterilizing unit to the heat exchanger (**28,20**).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bunin in view of Dieterich (U.S. Pat. 3,612,278).

Bunin does not teach a pump that is a peristaltic pump. Dieterich teaches a waste treatment and disposal system which incorporates a peristaltic pump 45 for transmitting the liquid effluent from the septic tank to the vaporization chamber. The peristaltic pump 45 employs tubular means, preferably concentric tubes, which define two or more separate flow paths for two or more different liquids. In accordance with one form of the invention, the concentric tubes merge into a single tube downstream of the pumping chamber whereby liquids may be intermixed in measured quantities. With this arrangement, chemical agents or other treating liquids such as antifoaming agents or deodorants may be introduced and intermixed with the liquid effluent prior to the introduction of the liquid to the vaporization chamber (see column 1, lines 36-52).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Bunin and replace the pump with an alternative pumping means such as a peristaltic pump as taught by the fluid treatment system of Dieterich.

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7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bunin as applied to claim 11 above, and further in view of Acernese et al. (U.S. Pat. 5,788,858).

Bunin does not teach a mobile platform to enable transportation to a variety of locations. Acernese et al. disclose a mobile water purification unit. The water purification unit is mounted to a mobile platform in order to treat municipal water supplies at fire hydrants or other sources of chlorinated water and also to purify water that may have been contaminated by chemical or biological agents (see column 3, line 65 to column 4, line 8). Figure 1 shows the fluid treatment system mounted to a mobile platform which enables transportation to a variety of locations.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Bunin to include a mobile platform for mounting the apparatus in order to enable transportation to a variety of locations as suggested by the mobile fluid treatment system of Acernese et al.

Allowable Subject Matter

8. Claims 1 and 3-10 are allowed.

9. Claims 12-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 22 April 2004 have been fully considered but they are not persuasive, with respect to claims 11, 17, and 18.

11. Applicant argues on page 6 of the Remarks that "Bunin relates to a process for sterilizing "infectious waste", no "contaminatable slurries" as claimed by Applicant". However, the Examiner is not limited to applicant's definition of "contaminatable slurries". Thus, the slurries of Bunin, as subject to contamination are indeed "contaminatable slurries". Moreover, with respect to the apparatus claims 11, 17, and 18, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

12. Furthermore, it is noted that nothing in claims 11, 17, or 18 excludes the presence of oxygen in the system. Although the preamble of claim 11 recites "to preclude aerobic and anaerobic bacteria from the slurry," the apparatus and method of Bunin are disclosed to destroy "all pathogenic agents contained in the infectious waste" (col.1, lines 29-37). Thus, it is not necessary to have an oxygen-free environment to achieve destruction of both aerobic and anaerobic bacteria.


Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (7:15 am-4:45 pm).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1275. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Leigh McKane
Primary Examiner
Art Unit 1744

elm
12 July 2004